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Report

OF A



COMMITTEE OF THE HOUSE OF REPRESENTATIVES,

Respecting certain Military Orders issued by His Honor LEVI LINCOLN, Lieutenant-Governor, and Commander in Chief of the Commonwealth of Massachusetts ; with the Documents referred to in the same.

THE Committee appointed "to inquire what military orders have been issued by his Honor the Lieutenant-Governor of this Commonwealth, or by the Adjutant-General, for the purpose of calling on the militia of this Commonwealth, to enforce the embargo laws ; and the manner in which said orders have been issued and executed," with orders "to proceed on said business, and report on the subject at large to this House as soon as possible," have attended to that service, and ask leave to report—

That on the first day of February, instant, military orders were issued through the Adjutant-General's office, by his Honor Levi Lincoln, Lieutenant-Governor and Commander in chief of this Commonwealth ; a copy of which orders accompanies this Report.

They find by the statement of the Adjutant-General, that these orders were directed and sent to the following officers severally, viz. Thomas Badger, Lieut. Colonel-Commandant ; Charles Turner, Lieutenant-Colonel ; Ebenezer Lothrop, Brigadier-General ; David Nye, Lieutenant-Colonel ; Baker Loring, Ebenezer Bowdich, and Thomas Williams, Captains ; James Bricket, Major-General ; Charles Bean, Simon Newell, and

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Moses Bradbury, Captains ; James Merrill, and Charles Thomas, Lieutenant-Colonels ; Joshua Danforth, Captain ; Samuel Reed, Lieutenant-Colonel ; and John Cooper, Brigadier-General : with the exception that the following words were not inserted in the order sent to Colonel Badger ; which the Adjutant-General states to have been omitted by mistake, viz. " Recollecting that in the happy government established by the American people, the character of the citizen, is not lost in that of the soldier, and that coolness, firmness, prompt obedience, and a sacred regard to the rights of society, and individuals are essential to both ; you will duly appreciate this opportunity of serving your country, and of even increasing the confidence she has placed in you."

Your Committee find that the officers above named were designated and appointed as " the militia officers" near several Ports of Entry within this Commonwealth, " to whom the Collector of the District is to apply, if it shall be necessary, to accomplish" the " purposes of the National Government," as " specified" in the orders. They are required to " be prepared and hold themselves in readiness with those under their command, armed and equipped, at the call of the Collector, and subject to his discretion, to aid him with their whole force, or such part thereof as may be sufficient to enable him within his District to discharge his duties, prevent disorders and opposition to the authority of Government, and carry the aforesaid laws into execution ;" and to " make correct muster and pay rolls of such militia as shall be employed in actual service, and transmit the same to the War Department of the United States."

The places of abode of the officers, and the Ports of Entry comprised within their several commands, are stated in a Schedule from the Adjutant-General's office, accompanying this Report.

Your Committee find, according to the statement of the Adjutant-General, that an officer has not been appointed "in or near to each Port of Entry within this State." No officer has been appointed, according to his statement, whose command appears to extend to either of the ports of Castine, Frenchman's Bay, Nantucket, Dighton, or Gloucester; unless the name of Gloucester ought to be added in the Schedule to the names of Newburyport and Ipswich, opposite the name of General James Brickett, of Haverhill; which the Adjutant-General "believes" ought to be the case, and which he says was accidentally omitted.

It will be seen by the said Schedule, that Machias, Passamaquoddy, and Moose Island, are all placed opposite the name of Brigadier-General John Cooper, of Machias. By the same document it appears, that the number of *infantry*, rank and file, of the entire command of the General and Field Officers afore-named, amounts to fifteen thousand two hundred and sixty-nine. The Adjutant-General does not state whether there are troops of any other description under their command. Your Committee could not ascertain the number of men under the command of the seven Captains, thus appointed, because the returns of Companies never appear in the Adjutant-General's office.

Contrary to military custom and the uniform usage in this Commonwealth, the orders to the Brigadier-Generals, Lieutenant-Colonels and Captains were sent directly to them respectively, without passing through the hands of their superior officers, and without consulting them, or giving them any notice of the same.

The Adjutant-General informed your Committee, that he had seen a letter from the Secretary at War to His Honor the Lieutenant-Governor, upon the subject of these appointments,

but that he had no copy of the same ; and that he believed it had always been the practice with other Governors of this Commonwealth to retain any communications to them from the Secretary at War of the United States.

Your Committee did not think it expedient to apply to His Honor for any communications which he might have received from the President or the Secretary at War.

Your Committee, under the injunction to report as soon as possible, have confined their inquiries respecting the manner in which the orders of His Honor have been executed, to the District of Boston and Charlestown. They find that Colonel Badger received the orders of the Commander in Chief on the second or third of February instant ; that by an order dated the seventh instant, he directed the commissioned officers under his command to meet on the following evening on military business ; that the officers having accordingly convened, the orders of the Commander in Chief were read to them, and they were required to hold themselves in readiness to march at a moment's warning with the men under their respective commands, for the purpose of enforcing the Embargo Laws, agreeably to the said orders.

Your Committee find that some of the officers so convened, belonged to a detachment consisting of five Companies, with a suitable proportion of officers, which had lately been detached from said Colonel Badger's command, and put under the command of Colonel Barnes, of Roxbury ; and that they form a part of the 100,000 men lately drafted for the service of the United States. Application was made to Colonel Badger, by some of his officers, at the time of said meeting and afterwards for a copy of said Orders, but they could not obtain them. Application was also made to

the Adjutant-General for a copy of the Orders, but without success. It was stated to your Committee, both by the Adjutant-General and Colonel Badger, that doubts having been entertained respecting the authority of the Naval Officer of the district of Boston and Charlestown, he had not been informed of these Orders, and it was intimated that this circumstance had prevented the circulation of the Orders in the usual mode.

Your Committee find that by the Constitution of the United States, Congress is authorized "to provide for the calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;" and that the President is the "Commander in Chief of the army and navy of the United States, and of the militia of the several States, *when called into the actual service of the United States.*"

Your Committee also find that by a law of the United States, passed February 28, 1795, entitled "An Act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions, and to repeal the Act now in force for those purposes," it is enacted, "that whenever the laws of the United States shall be opposed, or the execution thereof obstructed in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the Marshal by this Act, it shall be lawful for the President of the United States to call forth the militia of such State, or of any other State or States, as may be necessary to suppress such combinations, and to cause the laws to be duly executed; and the use of the militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the then next session of Congress:" "Provided always, that whenever it may be necessary in the judgment of

the President to use the military force hereby directed to be called forth, the President shall forthwith, by Proclamation, command such insurgents to disperse and retire peaceably to their respective abodes within a limited time."

Your Committee find that when there was an insurrection in the western parts of Pennsylvania, in the year 1794, and the insurgents finally perpetrated acts which amounted to treason, being overt acts of levying war against the United States, President Washington then proceeded most scrupulously, in conformity to the Act of Congress then in force, "to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions;" and troops were called forth from several States at the request of the President, by the Governors of the same, in the usual manner, according to law and custom. The Committee presume, however, that it will be readily perceived that nothing in the Constitution or Laws of the United States authorizes the President, under existing circumstances, to call forth the militia of this State, or any part thereof.

By the 10th section of an Act of Congress passed January 9th, 1809, it is provided, "That it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces, or militia of the United States or the territories thereof, as may be judged necessary, in conformity with the provisions of this and other Acts respecting the Embargo, for the purpose of preventing the illegal departure of any ship or vessel, or of detaining, taking possession of and keeping in custody and guarding any specie or articles of domestic growth, produce, or manufacture; and also for the purpose of preventing and suppressing any armed or riotous assemblage of persons, resisting the Custom-House

Officers in the execution of the Laws laying an Embargo; or otherwise violating, or assisting and abetting violations of the same."

The present Legislature of this Commonwealth have "Resolved, that the said Act of Congress, passed on the 9th day of January, in the present year, for enforcing the Act laying an Embargo and the several Acts supplementary thereto, is, in the opinion of the Legislature, in many respects unjust, oppressive and unconstitutional, and not legally binding on the citizens of this State."

But even if this Act were admitted to be constitutional, your Committee do not find that by the said Act, Congress have provided any new mode of calling forth the militia; and they conceive that the militia cannot *legally* be "employed" by the President of the United States, or by any person empowered by him, till they have been called forth in the mode which Congress had previously prescribed.

Your Committee find that by the Constitution of this Commonwealth, Chap. II. Sect. 1. Art. 7. the Governor is "entrusted" with all the "powers incident to the offices of Captain-General and Commander in Chief and Admiral, to be exercised agreeably to the Rules and Regulations of the Constitution *and the Laws of the Land, and not otherwise.*"

The same Constitution, Bill of Rights, Art. 17, declares that "the military power shall always be held in exact subordination to the civil authority, and be governed by it." This great principle is repeatedly recognized by our Laws, and was respected even amidst the horrors of a rebellion. By a Law passed February 20th, 1787, the preamble to which states, that an unnatural and dangerous rebellion actually existed at that time in this Commonwealth, it is declared, that "In a free Government, where the people have a

right to bear arms for the common defence, the military power is held in subordination to the civil authority."

In the 32d Section of the Militia Law of this Commonwealth, passed June 22d, 1793, which provides for calling out the militia "in case of threatened or actual invasion, insurrection or other public danger or emergency," it is enacted that whenever a detachment is made in any such case, "the officers, non-commissioned officers and privates, being able of body, *shall be detailed from the rosters or rolls which shall be kept for that purpose.*" And your Committee do not find that the Commander in Chief of this Commonwealth is authorized, in calling out the militia, to select and designate particular officers and particular corps or men, without regard "to the rosters or rolls which shall be kept for that purpose."

Wherefore, Resolved—

That in the opinion of this House, the said military orders of the 1st of February instant, issued by his Honor Levi Lincoln, Lieutenant-Governor and Commander in Chief of this Commonwealth, are irregular, illegal, and inconsistent with the principles of the Constitution; tending to the destruction of military discipline, an infringement of the rights, and derogatory to the honour of both officers and soldiers; subversive of the militia system, and highly dangerous to the liberties of the people.

All which is respectfully submitted.

ISAAC MALTBY, *Per order.*

ORDER referred to in the REPORT.

To ————

SIR,

YOU are sensible that Congress is authorized, by the Constitution of the United States, to provide for the calling forth of the militia to execute the Laws of the Union, suppress insurrections, and repel invasions;” and that the President is the “Commander in Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States.”

In pursuance of these constitutional powers, to prevent a repetition of those rash, indiscreet, unwarrantable and alarming evasions of the laws of the Union, which have disgraced our State, and been injurious to the respectable citizen and fair trader; it is provided by the eleventh section of an Act of Congress, passed January 9th, 1809, “That it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces, or militia of the United States or the territories thereof, as may be judged necessary, in conformity with the provisions of this and other Acts respecting the Embargo, for the purpose of preventing the illegal departure of any ship or vessel, or of detaining, taking possession of, and keeping in custody, any ship or vessel, or of taking into custody and guarding any specie or articles of domestic growth, produce or manufacture; and also for the purpose of preventing and suppressing any armed or riotous assemblage of persons resisting the Custom-House Officers, in the execution of the laws laying an Embargo, or oth-

erwise violating, or assisting and abetting violations of the same."

Thus authorized and called on to execute the laws of the Union, and to cause its authority to be respected, the President has directed the Secretary of War to request me, as commanding officer of the militia of this Commonwealth, to appoint some officer of the militia, of known respect for the laws, in or near to each port of entry within this State, with orders, when applied to by the Collector of the District, to assemble immediately a sufficient force of his militia, and to employ them efficaciously to maintain the authority of the laws respecting the Embargo. The President is peculiarly anxious that the officers selected should be such who can be best confided in to exercise so serious a power, with all the discretion, the forbearance, and the kindness, which the enforcement of the Embargo Laws will possibly admit; ever bearing in mind, that the life of a citizen is never to be endangered, but as the last melancholy effort for the maintenance of order and obedience to the laws. Confiding in your discretion, humanity, patriotism, and inviolable respect for the Laws and the Constitution of our common country; in obedience to the direction of the President, and in pursuance of the foregoing authority, I do hereby designate and appoint you the militia officer near the port of entry for the District of ———, to whom the Collector of the District is to apply, if it shall be necessary, to accomplish the above specified purposes of the National Government, and to execute the aforesaid Laws of the Union. You will therefore be prepared, and hold yourself in readiness, with those under your command, completely armed and equipped, at the call of the Collector, and subject to his discretion, to aid him with your whole force, or such part

thereof as may be sufficient to enable him, within his District, to discharge his duties, prevent disorders and opposition to the authority of Government, and carry the aforesaid Laws into execution. *Recollecting that in the happy government established by the American people, the character of the citizen is not lost in that of the soldier, and that coolness, firmness, prompt obedience, and a sacred regard to the rights of society and individuals are essential to both ; you will duly appreciate this opportunity of serving your country, and of even increasing the confidence she has placed in you.* You will make correct muster and pay rolls of such militia as shall be employed in actual service, and transmit the same to the War Department of the United States.

LEVI LINCOLN.

HEAD QUARTERS AT BOSTON, }
1st FEBRUARY, 1809. }

By order of the Commander in Chief.

WILLIAM DONNISON, *Adj. Gen.*

SCHEDULE referred to in the REPORT.

<i>Infantry.</i> <i>Rank and file of</i> <i>their entire com-</i> <i>mand.</i>	<i>Names of the Officers</i> <i>appointed.</i>	<i>Rank.</i>	<i>Place of</i> <i>Abode.</i>	<i>Near what Port</i> <i>of Entry they</i> <i>reside.</i>
Number in his Regt. 2346	Thomas Badger	Lieut. Col.	Boston	Boston.
Number in his Regt. 646	Charles Turner	Lieut. Col.	Scituate	Plymouth.
Number in his Regt. 2474	Ebenezer Bowdich	Brig. Gen.	Barnstable	Barnstable.
Number in his Regt. 1462	David Nye	Lieut. Col.	Falmouth	Edgarton.
	Baker Loring	Captain	New-Bedford	New-Bedford.
	Ebenezer Bowdich	Captain	Salem	Salem.
	Thomas Williamis	Captain	Marblehead	Marblehead.
Number in his Detachment, 4976	James Brickett	Major-Gen.	Haverhill	Newburyport and Ipswich.
	Charles Bean	Captain	York	York.
	Simon Nowell	Captain	Wells	Kennebunk.
	Moses Bradbury	Captain	Saco	Saco.
Number in his Regt. 986	James Merrill	Lieut. Col.	Falmouth	Portland.
Number in his Regt. 493	Charles Thomas	Lieut. Col.	Brunswick	Bath.
	Joshua Danforth	Captain	Wiscasset	Wiscasset.
Number in his Regt. 772	Samuel Reed	Lieut. Col.	Bristol	Waldoborough.
Number in his Brig. 1114	John Cooper	Brig. Gen.	Machias	Machias, Passa- maquoddy and Moose Island.

Memoandum.—The numbers of men mentioned above have no relation to the Orders; they are added at the request of the Committee; the Order mentions no numbers.

Attest—

WILLIAM DONNISON, *Adjutant-General.*

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